

THOMAS CONNELL

IBLA 79-584

Decided April 4, 1980

Appeal from decision of Eastern States Office, Bureau of Land Management, requiring additional rental and requiring that special stipulations be executed as a precondition to the issuance of oil and gas leases covering certain acquired land under the administration of the Forest Service. ES 15932 and ES 15933.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

2. Oil and Gas Leases: Acquired Lands -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Consent of Agency

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

APPEARANCES: Thomas Connell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Thomas Connell appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated December 8, 1978, requiring an increased annual rental rate of \$1 per acre instead of \$0.50 per acre. The decision also required appellant to execute special stipulations 1/ imposed by the Forest Service as a condition to the giving of its consent to the issuance of the oil and gas leases. The oil and gas lease offers were filed pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976). The land embraced by the leases is within the Osceola National Forest and is administered by the Forest Service. The purpose of the stipulation is to protect a virgin stand of Bald Cypress.

Appellant's oil and gas lease offers were filed on January 22, 1976, and were accompanied by the first year's annual rental at the rate of 50 cents per acre as required by the regulations. Effective February 1, 1977, 43 CFR 3103.3-2 was amended to increase the rental rate to \$1 per acre for all noncompetitive oil and gas leases issued thereafter. 42 FR 1032-1033 (Jan. 5, 1977).

Appellant's statement of reasons reads as follows:

Above applicant appeals from Decision of Dec. 8, 1978 requiring additional rental and submitting special stipulations, on grounds that applicant has paid rental required for said lands at time of filing. Applicant further appeals on grounds that the Special Stipulations required are indefinite and vague. Said stipulations do not set forth the special values for which operations on lands applied for will cause limitations on operations. Without a knowledge of said values, great uncertainty is introduced into future operations.

1/ The lessee is given advance notice that portions of the lease area contain special values, are needed for special purposes, or require special attention to prevent damage to surface resources. Any surface use or occupancy that might be allowed within such areas will be limited. It will be authorized by the Forest Service only if the lessee demonstrates that surface use or occupancy is essential to his operations and if he submits special plans for operations affecting these areas which will provide for such modifications as are satisfactory to the Forest Service for protection of the special values and existing or planned use. After the Forest Service has been advised of contemplated drilling operations on the leased lands, and on request of the lessee, the Forest Service will furnish further data on such areas, which now include but are not limited to: Area shown on attached map containing virgin stand of Bald Cypress.

[1] Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued after that date for over-the-counter offers filed prior to the effective date of the regulations. Tipperary Oil and Gas Corp., 35 IBLA 120 (1978); Altex Oil Co., 32 IBLA 44 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977). An oil and gas lease is not issued until it is signed by the authorized officer. Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); James W. Canon, 84 I.D. 176 (1977). As appellant's leases were not issued prior to February 1, 1977, the effective date of the regulation, he is required to pay the additional rental.

[2] The other question raised by this appeal is whether the Department of the Interior has the discretion to issue an oil and gas lease for Federal acquired lands pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, supra, without requiring the stipulation upon which the Forest Service conditioned its consent to issuance of the lease.

Section 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976), provides in part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *.

The same requirement of consent is stated in the regulations at 43 CFR 3109.3-1.

The Department has held that the effect of this statute is to preclude mineral leasing on acquired lands, as contrasted with public domain land, without the consent of the administrative agency having jurisdiction over the acquired land, and to cause any lease which does issue to be subject to any stipulations which said agency may impose. Sallie B. Sanford, 24 IBLA 31, 32 (1976); Frederick L. Smith, 21 IBLA 239, 241 (1975); Susan D. Snyder, 9 IBLA 91, 93 (1973). This Board has affirmed the right of the head of the agency administering acquired lands to impose special stipulations even where it appeared to this Board that the stipulations were unreasonable. Susan D. Snyder, supra; Duncan Miller, 5 IBLA 364 (1972). The Department has no jurisdiction to waive the execution of the special stipulation or to alter its terms. Susan D. Snyder, supra. Duncan Miller, supra.

Appellant is allowed 30 days from the date of this decision to comply with the requirements set out in the BLM decision for payment of additional rental and for acceptance of the special Forest Service stipulations. Failure to comply within the time allowed will result in final rejection of the lease offers. If appellant complies within the time allowed, further consideration of the offers will be subject to Secretarial Order No. 3049 of February 29, 1980, which suspended the issuance of noncompetitive oil and gas leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

